SUPREME COURT OF THE UNITED STATES

No. 87-107

BRENDA PATTERSON, PETITIONER *v.*
McLEAN CREDIT UNION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[April 25, 1988]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS join, dissenting.

The Court today asks the parties to rebrief and reargue this case, focusing not on some neglected subtlety of the issues presented for review or on any overlooked jurisdictional detail, but on a question not presented: Whether the Court should reconsider its 7–2 opinion (WHITE and REHNQUIST, JJ., dissenting) in *Runyon* v. *McCrary*, 427 U. S. 160 (1976). The Court's determination now to reach out to reconsider that prior decision and everything that has been built upon it, is neither restrained, nor judicious, nor consistent with the accepted doctrine of *stare decisis*. See, *e. g.*, *Vasquez* v. *Hillery*, 474 U. S. 254, 266 (1986) ("[T]he careful observer will discern that any detours from the straight path of *stare decisis* in our past have occurred for articulable reasons, and only when the Court has felt obliged 'to bring its opinions into agreement with experience and with facts newly ascertained,'" quoting *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 412 (1932) (Brandeis, J., dissenting)).

Twelve years ago, consistently with our prior decisions in *Jones* v. *Alfred H. Mayer Co.*, 392 U. S. 409 (1968); *Tillman* v. *Wheaton-Haven Recreation Assn., Inc.*, 410 U. S. 431 (1973); and *Johnson* v. *Railway Express Agency, Inc.*, 421 U. S. 454 (1975), we observed that it is "well established" that 42 U. S. C. § 1981 "prohibits racial discrimination in the

making and enforcement of private contracts." *Runyon* v. *McCrary*, 427 U. S., at 168. We reaffirmed our reading of the legislative history and language of the statute as reaching private acts of racial discrimination, and emphasized that in the years since *Jones*, Congress specifically had considered and rejected legislation to override our interpretation of the Civil Rights Act of 1866, 14 Stat. 27, on which § 1981 is based. 470 U. S., at 174 and n. 11. Writing for the Court, Justice Stewart noted:

> "There could hardly be a clearer indication of congressional agreement with the view that § 1981 *does* reach private acts of racial discrimination. . . . In these circumstances there is no basis for deviating from the well-settled principles *of stare decisis* applicable to this Court's construction of federal statutes." *Id.*, at 174–175 (emphasis in original).

See also *id.*, at 186–187 (Powell, J., concurring); *id.*, at 189–192 (STEVENS, J., concurring); *Illinois Brick Co.* v. *Illinois*, 431 U. S. 720, 736 (1977) ("[W]e must bear in mind that considerations of *stare decisis* weigh heavily in the area of statutory construction, where Congress is free to change this Court's interpretation of its legislation" (WHITE, J., writing for the Court)).

We continually have endorsed, in the employment and other contexts, *Runyon*'s interpretation that § 1981 reaches private conduct. See, *e. g.*, *Goodman* v. *Lukens Steel Co.*, 482 U. S. —— (1987); *Saint Francis College* v. *Al-Khazraji*, 481 U. S. —— (1987); *General Building Contractors Assn., Inc.* v. *Pennsylvania*, 458 U. S. 375 (1982). See also *Memphis* v. *Greene*, 451 U. S. 100 (1981). Over 100 lower court opinions cite the relevant portions of *Runyon* and its progeny. The parties in this case have not informed us of anything that suggests Congress has reconsidered its position on this statutory matter in light of *Runyon* and subsequent cases. I see no reason whatsoever for the Court deliberately to reach out in the manner it does today.

Although it is probably true that most racial discrimination in the employment context will continue to be redressable under other statutes, it may be that racial discrimination in certain other contexts is not actionable independently of § 1981. I am at a loss to understand the motivation of five Members of this Court to reconsider an interpretation of a civil rights statute that so clearly reflects our society's earnest commitment to ending racial discrimination, and in which Congress so evidently has acquiesced. I can find no justification for the bare majority's apparent eagerness to consider rewriting well-established law.

I dissent.